

HOUSE BILL 2553
By Halteman Harwel

AN ACT to amend Tennessee Code Annotated, Title 49 to allow for the creation of charter schools in the state of Tennessee which will provide an alternative means within the public school system for ensuring accomplishment of the necessary outcomes of education by allowing the establishment and maintenance of schools that operate within a school district structure but are allowed maximum flexibility to achieve their goals through the exemption from existing statutes, rules, regulations, and policies of the local and state board of education and where necessary to amend Tennessee Code Annotated, §§ 12-4-101 and 12-4-102 relative to public contracts; and Title 8, Chapter 35 relative to public employees' retirement.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

Section 2. Short title.

This part shall be known and may be cited as the "Tennessee Charter Schools Act of 1998."

Section 3. Purpose and intent.

(a) The purpose of this act is to:

- (1) improve pupil learning;
- (2) increase learning opportunities for pupils;
- (3) encourage the use of different and innovative teaching methods;
- (4) measure performance of pupils and faculty; or
- (5) create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.

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(b) It is the intention of this act to provide an alternative means within the public school system for ensuring accomplishment of the necessary outcomes of education by allowing the

establishment and maintenance of charter schools that operate within a school district structure but are allowed maximum flexibility to achieve their goals through the exemption from existing statutes, rules, regulations, and policies of the local and state board of education.

(c) It is not intended that this act provide a means to keep open a school that otherwise would be closed. Sponsors in this circumstance must demonstrate that conversion to a charter school fulfills a purpose specified in this subdivision, independent of the closing of the school.

Section 4. Applicability.

This act applies only to schools formed and operated hereunder.

Section 5. Definitions.

(a) "Licensed teacher" means a person over the age of eighteen who meets the qualifications of Tennessee Code Annotated, Title 49, Chapter 5, Part 1 and has received a license to teach in the public school system in compliance with the rules and regulations of the state board of education.

(b) "Charter agreement" means an academic or vocational performance based agreement between the sponsor of a charter school and the chartering authority, the terms of which are approved by the local or state board of education for an initial period of up to seven (7) years.

(c) "Charter school" means a public school in the State of Tennessee that is established and operating under the terms of a charter agreement and in accordance with this act.

(d) "Chartering authority" means the local board of education or the state board of education which, on appeal, approves, renews or decides not to revoke a charter school application or agreement.

(e) "Charter School Authorization Committee" means a panel, comprised of the commissioner of education, the commissioner of finance and administration, one (1) person appointed by the Governor, one (1) person appointed by the Lieutenant Governor, and one (1) person appointed by the Speaker of the House, such appointments shall be made giving due regard to the geographic distribution and the racial, ethnic and gender composition of the committee to

assure, to the extent possible, diversity and that all grand divisions are adequately represented.

It shall be the sole responsibility of the committee, in accordance with its own criteria, to control the number of charter schools in the state by enforcing the limits provided in this act.

(f) "Governing body" means the organized group of persons who will operate a charter school by deciding matters including, but not limited to budgeting, curriculum and other operating procedures for the charter school and by overseeing management and administration of a charter school.

(g) "Local education agency" has the same definition as used in Tennessee Code Annotated, §49-3-302.

(h) "Sponsor" means any person, group, institution of higher learning or other organization filing an application in support of the establishment of a charter school, at least one of which must be a licensed teacher.

Section 6. Public status; exemption from statutes, rules and regulations.

(a) Charter schools shall be part of the state program of public education.

(b) Except as otherwise provided in this act, a charter school is exempt from all statutes, rules and regulations applicable to a school, a school board, or a local education agency, although it may elect to comply with one or more provisions of statutes, rules, or regulations.

Section 7. Formation of charter school.

(a) A charter school may be formed by creating a new school or converting an existing school to charter status pursuant to the provisions of this act.

(1) Newly created charter schools:

(A) The sponsor of a charter school must file a charter school application with the local board of education on or before November 15 of the year preceding the year in which the proposed charter school plans to begin operation.

(B) Upon approval of a charter application, the sponsor shall authorize a governing body to operate the charter school.

(2) Conversion of existing schools to charter status:

(A) Any existing public school may convert to a charter school pursuant to the provisions of this act if seventy-five percent (75%) of the full-time teachers or sixty percent (60%) of the parents whose children are enrolled at the school agree and demonstrate support by signing a petition seeking conversion.

(B) The conversion must occur at the beginning of an academic school year and shall be subject to compliance with this act.

(b) No charter agreement shall be granted under this part that authorizes the conversion of any private or home-based school to charter status.

(c) Nothing in this part shall be construed to prohibit any private person or organization from providing funding or other assistance to the establishment or operation of a charter school.

Section 8. Charter application.

(a) On or before November 15 of the year preceding the year in which the proposed charter school plans to begin operation, the sponsor seeking to establish a charter school shall prepare and file with the local board of education an application providing the following information and documents:

(1) A statement defining the mission and goals of the proposed charter school;

(2) A description of the proposed instructional goals and methods for the school, which at a minimum, shall include teaching and classroom instruction methods that will be used to provide students with the knowledge, proficiency and skills needed to reach the goals of the school;

(3) A plan for evaluating student academic achievement at the proposed charter school and the procedures for remedial action that will be used by the school when the academic achievement of a student falls below acceptable standards

(4) An operating budget based on anticipated enrollment;

- (5) A description of the method for conducting annual audits of the financial, administrative and program operations of the school;
- (6) A timetable for commencing operations as a charter school which shall provide for a minimum number of academic instruction days.
- (7) A description of the proposed rules and policies for governance and operation of the school;
- (8) The names and addresses of the members of the governing body, if known at the time of the application;
- (9) A description of the anticipated student enrollment;
- (10) A description of the admission, suspension and expulsion policies and procedures of the proposed charter school;
- (11) A description of the procedures the school plans to follow to ensure the health and safety of students, employees, and guests of the school and to comply with the applicable health and safety laws and regulations of the federal government and the laws of the state of Tennessee;
- (12) An explanation of the qualifications required of employees of the proposed charter school; and
- (13) An identification or description of the individuals and entities sponsoring the proposed charter school, including their names and addresses.

Section 9. Chartering authority.

- (a)(1) The local board of education shall have the authority to approve applications to establish charter schools and renew charter school agreements. The local board of education shall rule by resolution, at a regular or special called meeting, on the approval or denial of a charter application within thirty (30) days of receipt of the application. Should the local board of education fail to either approve or deny a charter application within the thirty (30) day time limit herein prescribed, such application shall be deemed approved.

(2) The local board of education shall not deny an application on the basis that approval of said application might exceed the maximum number of charter schools provided for in subsection 9(b) of this part. The grounds upon which the local board of education based a decision to deny a charter school application must be stated in writing. Upon receipt of the grounds for denial, the sponsor shall have fifteen (15) days within which to submit an amended application to correct the deficiencies. The local board of education shall have fifteen (15) days to either deny or approve the amended application.

(3) A denial by the local board of education of an application to establish a charter school, may be appealed by the sponsor, within ten (10) days of the final decision to deny, to the state board of education. The appeal shall receive de novo review on the record, without the presumption of correctness of the decision of the local board of education, by the state board of education. If the state board approves the charter application, the state board of education shall be the chartering authority for such school.

(b) For the academic years of 1999-2000 and 2000-2001, no more than eight (8) applications may be approved per grand division; provided, however no more than four (4) of the approved applications are in Shelby county in the western division; no more than four (4) of the approved applications are in Davidson county in the middle division; and in the eastern division no more than three (3) of the approved applications are in Knox or Hamilton county. In school districts outside the aforementioned metropolitan areas, there shall be no more than one charter school per 3,000 students in average daily membership. Following the aforementioned academic years, there shall be no limit on the number of charter applications that may be approved.

Section 10. Charter School Authorization Committee.

Every approved application whether approved by the local board of education or the state board of education shall be delivered to the charter school authorization committee before April 1 of the year in which the charter school plans to begin operation. Within thirty (30) days after receipt of the approved applications, the committee shall authorize the maximum number of

charter schools provided in subsection 9(b) of this part to begin operation. The remaining applications shall be returned to the local board of education denied. The decision of the committee shall be final. No appeal may be taken.

Section 11. Charter agreement.

The approval by the chartering authority of a charter school application shall be in the form of a written agreement signed by the sponsor and the chartering authority, which shall be binding upon the governing body of the charter school. The charter agreement for a charter school shall be in writing and contain at least each of the following:

- (a) a description of a program that is consistent with the approved application and carries out one or more of the purposes stated in section 3 of this part;
- (b) specific goals or outcomes pupils are to achieve;
- (c) admission policies and procedures;
- (d) management and administration of the school;
- (e) anticipated enrollment and an operating budget based thereon;
- (f) requirements and procedures for administrative, program and financial audits;
- (g) a description of the manner in which compliance with the provisions of sections 12 and 15 of this part shall be achieved;
- (h) assumption of liability by the charter school;
- (i) types and amounts of insurance coverage to either be held by the charter school or provided by the local board of education;
- (j) the term of the agreement, which may be up to seven (7) years; and
- (k) a description of the plan for transportation for the pupils attending the charter school.

Section 12. Requirements.

- (a) A charter school shall:

(1) operate as a public, nonsectarian, nonreligious public school, with control of instruction vested in the governing body of the school, under the general supervision of the chartering authority and in compliance with the charter agreement and this act;

(2) receive state and federal funds from the state board of education as provided in subsections 13(a) and (b) of this part; and

(3) provide special education services for students with disabilities as provided in Tennessee Code Annotated, Title 49, Chapter 10.

(b) A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, national origin, religion, ancestry, or need for special education services. Except as provided in this act, enrollment in a charter school shall be open to any child who resides within the state as if the charter school were not operating under a charter.

(c) A charter school shall comply with all applicable health and safety standards, regulations and laws of the United States and the state of Tennessee.

(d) A charter school shall be accountable to the chartering authority for the purposes of ensuring compliance with the charter agreement and the requirements of this act.

(e) If purchasing procedures are not addressed in the charter agreement, then all contracts for goods and services in excess of five thousand dollars (\$5,000) must be approved by the governing body of each charter school.

(f) A charter school shall be governed and managed by a governing body in a manner agreed to by the sponsor and the chartering authority as provided in the charter agreement.

(g) With regard to conflicts of interest, the governing body of a charter school shall be subject to the provisions of Tennessee Code Annotated, §§12-4-101 and 12-4-102.

(h) The meetings of the governing body of a charter school shall be deemed public business and must be held in compliance with Tennessee Code Annotated, Title 8, Chapter 44, Part 1.

(i) At least seventy-five percent (75%) of the teachers providing instruction in the grades K-5 shall be licensed teachers. At least twenty-five percent (25%) of the teachers providing instruction in grades 6-12 shall be licensed teachers.

(j) A charter school is subject to audit procedures and audit requirements as approved by the state board of education.

(k) A charter school shall not charge tuition; provided, however, tuition may be charged if the local board of education approves a transfer from another district to a charter school in its district pursuant to the provisions of Tennessee Code Annotated, §49-6-3003.

Section 13. Funding procedure established.

(a) The local board of education shall allocate funds to the charter school on the same basis as other schools with similar populations. Such funds shall be disbursed as provided for in the charter agreement according to the schedule established for the distribution of state funds pursuant to Tennessee Code Annotated, §49-3-354(a). All funds shall be spent according to the budget submitted in the charter agreement, or as otherwise revised by the charter school governing body, subject to the requirements of state and federal law. The board may act as fiscal agent for a charter school or distribute the allocated funds to the charter school to be administered in compliance with the charter agreement and state and federal laws.

(b) Funds which would otherwise be allocated on the basis of enrollment in the prior year shall be allocated, during the first full academic year of operation of any charter school, on the basis of the anticipated enrollment in the charter agreement, which amount may be subsequently reduced but not increased by the actual number of students enrolled.

(c) In order to comply with the requirements for allocating funds to the charter school, the local board of education may provide liability or other forms of insurance pursuant to the charter agreement.

(d) A charter school may also be funded by federal grants, grants, gifts, devises, or donations from any private sources; and state funds appropriated for the support of the charter school, if

any; and any other funds that may be received by the local school district. Charter schools, the local board of education and the state board of education are encouraged to apply for federal funds appropriated specifically for the support of charter schools.

Section 14. Admission requirements.

(a) A charter school may limit admission to:

(1) students within an age group or grade level; or

(2) students who are eligible to participate in the "GED Plus 2" program, adult high schools and other similar programs.

(b) A charter school may not limit admission to pupils on the basis of intellectual ability, measures of achievement or aptitude, or athletic ability.

(c) A charter school shall enroll an eligible pupil who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, pupils shall be enrolled on the basis of a lottery system determined by the charter school. Preference may be afforded to the siblings of a pupil who is already enrolled and to the children of a teacher, sponsor or member of the governing body of the charter school, not to exceed 10% of total enrollment or twenty-five (25) students, whichever is less.

Section 15. Pupil performance.

A charter school must design its program to at least meet the performance standards and requirements adopted by the state board of education for students in other public schools. In the absence of state board performance standards and requirements, the charter school must meet the specific goals and outcomes contained in the charter agreement. The achievement levels of the performance standards in the charter agreement may exceed the achievement levels of the performance standards adopted by the state board of education.

Section 16. Other operating matters.

Except as otherwise provided in this act, the governing body of the school shall decide matters

related to the operation of the school, including but not limited to budgeting, curriculum and operating procedures.

Section 17. Transportation.

(a) If a charter school elects to provide transportation for its pupils, the transportation shall be provided by the charter school or by agreement with the local education agency within the district in which the charter school is located in the same manner it would be provided if the students were enrolled in any other school within the local education agency. If a charter school elects not to provide transportation for its pupils, the charter school shall not receive the funds that would otherwise have been spent to do so.

(b) For pupils who reside outside the district and who have been approved by the local board of education to attend a charter school in its district, the charter school is not required to provide or pay for transportation between the pupil's residence and the border of the district in which the charter school is located; provided however a parent may be reimbursed by the charter school for the costs of transportation from the pupil's residence to the border of the district in which the charter school is located if the pupil is from a family whose income is at or below the poverty level, as determined by the federal government. The reimbursement may not exceed the pupil's actual cost of transportation or fifteen (15) cents per mile traveled, whichever is less. Reimbursement may not be paid for more than 250 miles per week.

(c) At the time a pupil enrolls in a charter school, the school shall provide the child's parent or guardian with information regarding transportation.

Section 18. Initial capital.

If the sponsor indicates approval is necessary for the sponsor to raise working capital, a chartering authority may approve a charter application for a charter school before the sponsor has secured equipment, facility, or personnel.

Section 19. Dissemination of information.

The state department of education shall provide information to the public, directly and through the local board of education, on how to form and operate a charter school. This information shall include a standard application format which shall include the information specified in section 8 of this part.

Section 20. Leave of absence.

- (a) If a teacher employed by a local education agency makes a written request for an extended leave of absence to teach at a charter school, the local education agency must grant the leave. The local education agency must grant a leave for any number of years requested by the teacher, and must extend the leave at the teacher's written request. The local education agency may require that the request for a leave of absence be made up to ninety (90) days before the teacher would otherwise have to report for duty. The leave shall be governed by Tennessee Code Annotated, Title 49, Chapter 5, Part 7. including, but not limited to, reinstatement, notice of intention to return, seniority, salary, and insurance.
- (b) The years of service acquired by a teacher while on a leave of absence to teach at a charter school shall not be used to obtain or determine tenure status.

Section 21. Collective bargaining.

Employees of a charter school may, if otherwise eligible, organize under the "Education Professional Negotiations Act", Tennessee Code Annotated, Title 4, Chapter 5, Part 6 and comply with its provisions. The governing body of a charter school is a public employer, for the purposes of the Education Professional Negotiations Act, upon formation of one or more bargaining units at the school. Bargaining units at the school shall be separate from any other units within the sponsoring district, except that bargaining units may remain part of the appropriate unit within the local education agency, if the employees of the school, the exclusive representative of the appropriate unit in the local education agency, and the local board of education agree to include the employees in the appropriate unit of the local board of education.

Section 22. Employee benefits.

(a) Teachers and other employees of a charter school may participate in the group insurance plans authorized in Tennessee Code Annotated, Title 8, Chapter 27, Part 3 in the same manner as other employees of the local education agency.

(b) Tennessee Code Annotated, Title 8, Chapter 35, Part 2, is amended by adding the following as a new, appropriately designated section:

(a) Any charter school formed and operated under the Tennessee Charter Schools Act of 1998 shall become a participating employer in the Tennessee consolidated retirement system and all its employees shall become members of the retirement system as a condition of employment.

(b) Except as provided in subsection (c), all employees of a charter school shall participate in the retirement system under the same terms and conditions as they exist now or in the future for public school teachers.

(c) Notwithstanding any provision of the law to the contrary, an employee of a charter school shall pay both the employer and employee contributions attributable to the employee's participation in the retirement system, unless the governing body of the school elects to assume the employer contributions pursuant to subsection (e) of this section. In such event, the employee shall be responsible for employee contributions required by Tennessee Code Annotated, §8-37-202.

(d) The governing body of a charter school shall pay for the cost of an actuarial study to determine the liability associated with its employees' participation in the Tennessee consolidated retirement system.

(e) The governing body of a charter school may, by resolution duly adopted, assume the total amount of employer contributions required to be paid by its employees pursuant to subsection (c).

(f) Notwithstanding any provision of the law to the contrary, the retirement system shall not be liable for the payment of any retirement allowances or other benefits on account of the employees or beneficiaries of a charter school for which reserves have not been previously created from funds contributed by the charter school or its employees for such benefits.

(g) Benefits payable on behalf of a charter school participating under this section shall not be paid if assets credited to that charter school are not equal to or greater than their benefit obligation for that month. Retroactive benefits shall be paid upon accumulation of sufficient assets.

Section 23. Reports.

The governing body of the charter school shall make at least an annual progress report by the first Tuesday of the month of September to the sponsor of the charter school, the chartering authority, Education Oversight Committee of the General Assembly, and the commissioner of education. The report shall contain at least the following information:

- (a) the progress of the school toward achieving the goals outlined in its charter;
- (b) the same information required in the reports prepared by local boards of education pursuant to state laws, rules and regulations; and
- (c) financial records of the charter school, including revenues and expenditures.

The reports made pursuant this section shall be public information pursuant to the provisions of Tennessee Code Annotated, §10-7-504(a)(4).

Section 24. Renewal of charter agreement.

- (a) A new charter school may be approved for a period up to seven (7) academic years. A charter agreement may be renewed for a period not to exceed seven (7) academic years.
- (b) No later than November 15 of the year prior to the year in which the charter expires, the governing body of a charter school shall submit a renewal application to the local board of education. The local board of education shall within thirty (30) days of receipt of the renewal application rule by resolution, at a regular or special called meeting, on whether to approve or

deny the renewal application. A decision by the local board of education to deny renewal may be appealed by the governing body, within ten (10) days of the decision to deny, to the state board of education. Such an appeal shall receive de novo review on the record, without the presumption of correctness of the decision of the local board of education, by the state board of education. If the state board of education approves the renewal of the charter agreement, the charter school shall continue to operate for the prescribed period of renewal not to exceed seven (7) academic years. A decision by the state board of education to deny the renewal of a charter agreement shall be final. No appeal may be taken.

(c) A charter school renewal application shall contain:

(1) A report on the progress of the charter school in achieving the goals, objectives, pupil performance standards, content standards, and other terms of the initial approved charter agreement; and

(2) A financial statement that discloses the costs of administration, instruction, and other spending categories for the charter school.

Section 25. Nonrenewal or termination of charter school.

(a) A charter school agreement may be revoked or denied renewal by the final chartering authority if such chartering authority determines that the charter school did any of the following:

(1) committed a material violation of any of the conditions, standards, or procedures set forth in the charter;

(2) failed to meet or make reasonable progress toward achievement of the content standards or pupil performance standards identified in the charter agreement; or

(3) failed to meet generally accepted standards of fiscal management.

(b) If the chartering authority revokes or does not renew a charter agreement, the chartering authority shall state its reasons for the revocation or nonrenewal.

(c) Except where the chartering authority is the state board of education, a decision not to renew or to revoke a charter agreement may be appealed to the state board of education within

ten (10) days of said decision. If the state board of education decides to renew or not to revoke the charter, the state board of education shall be the chartering authority for such school.

(d) Except in the case of fraud, misappropriation of funds, flagrant disregard of the charter agreement or the provisions of this act or similar misconduct, a decision to revoke a charter shall become effective at the close of the academic year.

Section 26. Pupil enrollment.

If a charter agreement is not renewed or is terminated in accordance with section 25 of this part, a pupil who attended the school, siblings of the pupil, or another pupil who resides in the same place as the pupil may enroll in the resident district or may submit an application to a nonresident district according to the provisions of Tennessee Code Annotated, §§ 49-6-3104 and 49-6-3105 at any time. Applications and notices required by this section shall be processed and approved in a prompt manner.

Section 27. General authority.

The governing body of a charter school may sue and be sued. The governing body may not levy taxes or issue bonds. A charter school may conduct activities necessary and appropriate to carry out its responsibilities such as: contract for services, including but not limited to education and management services; buy, sell or lease property; borrow funds as needed; and pledge its assets as security, provided however those assets are not leased or loaned by the state or local government.

Section 28. Immunity.

The state board of education, members of the state board, the local board of education, members of the local board, a sponsor, members of the board of a sponsor, employees of a sponsor and the governing body of a charter school shall be immune from civil liability with respect to all activities related to a charter school they approve, sponsor or operate. Such immunity shall be removed when such conduct amounts to willful, wanton or gross negligence.

Section 29. Rules and regulations.

The state board of education is authorized to promulgate rules and regulations for the administration of this act.

Section 30. Effective date.

This act shall take effect upon becoming law, the public welfare requiring it.